COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Writ Petition No.3017 of 2001 (M/S)

B.H.E.L. Workers Union, B.H.E.L., Ranipur

District Haridwar.

Vs.

Union of India and others.

A.F.R. (Approved for reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Initials of Judge

Date: 2nd May 2007

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 3017 of 2001 (M/S)
(Old No. 14781/1999)

B.H.E.L. Workers Union, BHEL, Ranipur, District Hardwar.
…… Petitioner.

Versus

1. Union of India through Secretary, Ministry of Labour, New Delhi.
2. Central Government Industrial Tribunal-cum-Labour Court, Pandu Nagar, Kanpur.
3. Bharat Heavy Electricals Limited Ranipur District Hardwar through its General Manager (P & A).
4. Shri Hari Shanker Jauhri A-50 Sivalik Nagar, Ranipur, District Hardwar.

… Respondents.

Sri Pankaj Miglani, learned counsel for the petitioner.
Sri V.K.Kohli, Sr. Advocate, assisted by Sri I.P.Kohli, learned counsel for the BHEL-respondent no.3.

Dated May 02, 2007.
Hon'ble B.S.Verma, J.

By means of the present writ petition, the petitioner has prayed for issue a writ, direction or order in the nature of certiorari for quashing the order dated 1.12.1998 passed by the respondent no.2 –Central Government Industrial Tribunal-cum-Labour Court, Pandu Nagar Kanpur in Industrial Dispute No. 98 of 1998, The General Secretary B.H.E. Karmachari Sangh, B.H.E.L. Vs. M/s Bharat Heavy Electricals Ltd. By the impugned order, the reference was dismissed for want of prosecution and the workman was held to be not entitled to any relief. The petitioner has further prayed for mandamus of this Court commanding the respondent no.1 to amend the order of reference after impleading the petitioner-Union as a part to the Industrial Dispute referred for adjudication in Industrial Dispute Case No. 98 of 1998.

The impugned order has been assailed mainly on the ground that the respondent no.2 has committed a manifest error of law by refusing the petitioner-Union to the impleaded as party to

the disute on behalf of the workmen; that the petitioner Union had fully proved its case before the Tribunal about its vital interest in the adjudication case and that the respondent no.1 has committed a manifest error of law by impleading BHEL Karmchari Sangh in the order of reference, while the aforesaid Sangh had never been in the picture before the High Court and the rejection of the prayer of the petitioner to be impleaded as a party is illegal.

Relevant facts of the case are one of the Office bearers of the B.H.E. Karmchari Sangh, named H.S.Jauhari, filed an application under Section 11C of the U.P. Industrial Disputes Act 1947 before Labour Court Meerut on 1-7-1977 declaring that Order dated 22.3.1974 thereby reducing the leave may be declared as inoperative and infructuous and it be declared that the workmen employed after 22.3.1974 are entitled to earned leave for 30 days, sick leave for 20 days and causal leave for 12 days in a calendar year. The respondent Company filed its written statement and an objection was raised by the respondent no.3 that the said application was not maintainable under Section 11C of the Act and the Labour Court has no jurisdiction to grant any relief over the enforcement of a liability, if any, created by the Standing Order. The BHE Karamchari Sangh and the respondent no.3 both led oral and documentary evidence in support of their case. Ultimately the Labour Court Meerut vide order dated 29-11-1983 allowed the application of respondent no.2 and declared that leave mentioned in Clause 8(j) of the Standing Order is applicable to all the workmen whether employed prior to 22.3.1974 or afterwards. Aggrieved, the Respondent Comp[any filed Writ Petition No. 4197 of 1984, B.H.E.L. Vs. Labour Court and others before the Allahabad High Court. The Allahabad High Court vide order dated 23.12.1997 set aside the order impugned dated 29-11-1983 and it was ordered that "I, therefore, direct the Central Government, under Section 10 of the Industrial Disputes Act, 1947, who is the appropriate authority, as the unit is owned by its, to refer the matter within three months from the date of receipt of a copy of this judgment to the Industrial

Tribunal for deciding the matter and after reference the Industrial Tribunal is to decide the same within a period of six months after hearing the parties. This direction of reference is being given so that peace may prevail in the industry and the workers may get justice after adjudication." Aggrieved by the said order, Shri Hari Shankar Jauhari filed Special Leave Petition No. 14992 of 1998 before the Supreme Court, which was dismissed as infructuous vide order dated 13-09-1999.

Learned counsel appearing on behalf of the B.H.E.L. has submitted that earlier the application under Section 11C of the U.P. Industrial Disputes Act, 1947 was filed by one Shri Hari Shankar Jauhari, General Secretary of the B.H.E. Karamchari Sangh Ranipur and the matter gave rise to Dispute No. 2 of 1977 before the Labour Court Meerut and the award was made vide order dated 29-11-1983. The award was challenged before the High Court of Allahabad as mentioned earlier. The submission of the learned counsel is that the present petition has been filed by the B.H.E.L. Workers Union. Learned counsel for the B.H.E.L. further submitted that the Special Leave Petition was preferred by Hari Shankar Jauhari before the Apex Court against the order dated 23-12-1997 passed by the Allahabad High Court in 1998, but the petitioner Union never approached the Apex Court for being impleaded as party to the S.L.P., therefore, an adverse inference should be drawn against the petitioner. The Special Leave Petition was ultimately dismissed as infructuous vide order dated 13-9-1999, therefore, the writ petition is not entertainable.

I have heard learned counsel for the parties and perused the material on record including the counter-affidavit filed by the respondent-B.H.E.L. and the rejoinder affidavit filed by the petitioner.

In paragraph No. 22, it has been stated that the petitioner has no locus standi to challenge the order dated 23-10-

1998 passed by the respondent no.1 as well as the award dated 1-12-1998 passed by the respondent no.2.

The impugned order dated 1-12-1998 was passed by the Presiding Officer, Labour Court in the absence of the Union, therefore, the reference was not decided on merit. Since the dispute referred to the Labour Court had not been adjudicated upon finally, therefore, the order passed by the respondent no.2 cannot be said to be an award.

Learned counsel for the petitioner Sri Pankaj Miglani has submitted that the Apex Court in the case of ***Heavy Engineering Mazdoor Union Vs. State of Bihar and others [AIR 1970, Supreme Court, Page 82]*** has held that the 'appropriate government' regarding central government corporation including the B.H.E.L. and those which are not mentioned in Section 2(1)(a) of the Industrial Disputes Act would be the State Government, but subsequently, the Apex Court by three Judge Bench in the case of *Air India Statutory Corporation and others Vs. United Labour Union and others [(1997) 9 Supreme Court Cases, Page 377]* has held that the ratio in Heavy Engineering Case is no longer good law. Learned counsel therefore submitted that the Central Government was the appropriate government under Section 2(1)(a)(i) of the Industrial Disputes Act, 1947. On the other hand, learned counsel for the respondent B.H.E.L., Sri V.K.Kohli Senior Advocate, assisted by Sri I.P.Kohli, has contended that the argument of the learned counsel for the petitioner is not tenable in view of the Apex Court judgment in the case of ***Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others [(2001) 7 Supreme Court Cases, Page 1]*** the case of Air India Statutory Corporation Vs. United Labour Union (supra) has been overruled prospectively. In this view of the matter, the ratio of the earlier judgment in the case of *Heavy Engineering Mazdoor Union V. State of Bihar* (supra) would apply. Learned

counsel for the petitioner has fairly conceded that the case of Air India Statutory Corporation is no more a good law.

It is not disputed that now the State Government is the appropriate government and the industrial dispute may be raised before the appropriate government.

It is pertinent to mention that the petitioner is not aggrieved by the order-dated 1.12.1998 because the petitioner was not a party before the Labour Court. The petitioner has stated in paragraph no. 12 that the Government of India vide its letter dated 23-10-1998 had refused to implead the petitioner in the adjudication case to contest the case on behalf of the workmen of respondent no.3 on the ground that the petitioner Union was not a party in the original dispute in the High Court. But the petitioner has not challenged the said order dated 23-10-1998 in the prayer clause. Learned counsel for the respondent has urged that the petitioner has not challenged the order dated 23-10-1998 in the prayer clause, therefore, on this ground also, the writ petition is devoid of merit.

Having considered the counter-affidavit filed by the respondent no.3 and the rejoinder affidavit filed by the petitioner and having heard the rival contention of both the parties, I am of the view that the present workers union (petitioner) is competent to raise an industrial dispute, but the industrial dispute ought to have been raised before the appropriate government.

Accordingly, the writ petition is devoid of merit and is hereby dismissed. However, if any dispute exists, the petitioner may raise a dispute afresh before appropriate government. No order as to costs.

All application stand disposed of.

(B.S. Verma, J.)

RCP